

Priority Urgent

THE DEPARTMENT OF INTERNAL AFFAIRS

Te Tari Taiwhenua

Local Government Briefing

Hon Rodney Hide
Minister of Local Government

Copy to: Hon John Carter
Associate Minister of Local Government

Title: Aide Memoire: Meeting with Ministers about the Government's response to the Environment Canterbury review report

Date: 17 February 2010

Key issues

You are attending a meeting on 17 February with Ministers Gerry Brownlee, Nick Smith, David Carter, Kate Wilkinson and officials to discuss the Government's response to the Environment Canterbury review team's report.

Action sought	Timeframe
Note the contents of this briefing.	Prior to meeting at 7.30pm on 17 February.

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested first contact
		direct line	after hours	
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DMS file reference: PLG-2500-3_4
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Marilyn Little
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Aide memoire: Meeting with Ministers about the Government's response to the Environment Canterbury review report

- This aide memoire provides information for your meeting at 7.30pm on 17 February with Ministers Brownlee, Smith, Carter and Wilkinson to discuss the Government's response to the Environment Canterbury (ECan) review team's report.

Points to note

WITHHELD UNDER SECTION 9(2)(g)(i)

Problem definition

- The review team note that the issue of freshwater management (both ground and surface water) is the single most significant issue facing the Canterbury Region.
- It considers that ECan has not managed freshwater effectively. There is an "enormous and unprecedented" gap between what needs to be done to manage freshwater effectively, and ECan's ability to do so. Central government intervention is required to ensure that freshwater is managed effectively.
- The key indicator of ECan's failure, in relation to freshwater management, is that there is no operative region-wide planning framework under which decisions on water allocation and environmental management can be made which appropriately balance environmental, economic, social and cultural considerations.
- The review team note that the overarching resource management plan for the Region, the Natural Resources Regional Plan, appears to be 'stuck'. This has led to uncertainty, increased costs, and time delays, not only for resource consent applicants, but also submitters, community and environmental groups as well as the public generally.
- Resolving water resource issues is complex, controversial and requires difficult judgments. The council historically has been evenly balanced, which is broadly

reflective of a pro-environment – pro-development split of its constituency, and this partly explains ECan's inability to put in place a regional planning framework.

- Another element is that ECan's Planning and Consenting Division historically has not performed effectively (although the team notes recent improvements). This lack of performance relates to leadership, structure, culture, mix of skills, and philosophical approach of officers to resource consenting and planning. The report recommends that a "fit for purpose" review of the planning and consenting function is carried out.

WITHHELD UNDER SECTION 9(2)(g)(i)

- We consider that the Government's response needs to be very clearly aligned with the problem definition as there are significant risks involved in removing the democratic rights of communities to be represented by elected members (particularly for as long as three years). If Option 1 below is preferred and all elected members replaced by commissioners, we consider that an advisory group should be set up to represent community interests and views.
- An alternative could be for the Government, instead, to appoint commissioners to put in place an effective RMA regulatory policy and planning framework, and make sure that ECan has the leadership, capability and structure to effectively support that framework. Given that the issues relate to the RMA, we consider this work should be led by the Ministry for the Environment.
- Issues, with how to 'carve' out these responsibilities, while keeping the rest of the council intact, would need to be resolved. These include:
 - the relationship between the commissioners and the council in undertaking other functions which are integrated with water; and
 - the relationship between the commissioners and the chief executive in being able to fix internal organisational issues.

Possible outcomes for commissioners

- The outcomes for commissioners will depend on the level of intervention.

Option 1 - Commissioners are appointed to replace the elected council

- Commissioners act as ECan's governing body until the 2013 local body election. This could have the following outcomes:
 - Improved leadership for the Canterbury region;
 - a robust regional policy and planning framework, including a Natural Resources Regional Plan and Environmental Flows Plans; and
 - service delivery improvements, including:
 - that ECan has the leadership, capability and structure to effectively support a regional policy and planning framework; and

- putting ECan's relationships with territorial authorities onto a sound and sustainable footing.

Option 2 - Commissioners are appointed to take over part of the elected council's responsibilities

- Commissioners are appointed either to oversee the elected council and/or to take over part of the elected council's responsibilities. This could have the following outcomes:
 - a robust regional policy and planning framework, including finalising the Natural Resources Regional Plan and Environmental Flows Plans; and
 - service delivery improvements, including:
 - that ECan has the leadership, capability and structure to effectively support a regional policy and planning framework; and
 - putting ECan's relationships with territorial authorities onto a sound and sustainable footing.

Proposed legislative process is ambitious

- We understand Ministers are seeking to take legislation through all stages before Easter. A tentative timeline for the legislation process is therefore as follows:
 - 24 February - Draft joint Cabinet paper for discussion by Ministers
 - 1 March - Cabinet considers ECan paper
 - 3 March - Drafting instructions sent to Parliamentary Counsel Office
 - 19 March - Draft Bill received from Parliamentary Counsel Office
 - 25 March - Cabinet Legislation Committee
 - 30 March (before 1pm) - Legislation introduced/tabled under urgency by Leader of the House

We consider that this timetable is ambitious. May or June would be more realistic.

Resourcing implications

- Regardless of timing of the Bill, delivery will require analysts with experience in policy / regulatory work. From the Department's perspective, all of our experienced analysts are working on the 3rd Auckland Bill.
- To be able to contribute in any meaningful way, we would need to participate in a co-located cross-agency team or have (at least two) senior analysts seconded to us for the duration of the project.
- Funding for an experienced legislative drafter (at say \$40,000) may also be required, depending on PCO availability.
- There are also resourcing implications for ongoing monitoring and support for commissioners, depending on the scale of the commissioners' powers and tasks. We estimate this would include two full-time equivalents for monitoring and policy advisory roles at a cost of \$300,000 per annum (including overheads).

Possible Commissioners

- On 11 February we provided you with biographical information on possible candidates that could be considered as local authority commissioners. This list is attached as Annex A. We consider that any of these candidates would be qualified to act as commissioners for ECan, however, careful consideration of skill sets would be needed if commissioners are to have specific functions in the re-generation of ECan. Consideration of candidates' availability until 2013, if necessary, would also be important. The Ministry for the Environment (MfE) has also provide a list of candidates included in Annex A.

Release of ECan report

- You and the Minister for the Environment will be announcing the release of the ECan report at a press conference at 10am on 19 February. Embargoed copies of the report will be distributed to ECan on 18 February to enable councillors and staff to be proactively briefed 30 minutes before the press conference. The report will be sent to stakeholders consulted during the review at 11am, and posted on the Department of Internal Affairs and Ministry for the Environment websites before 12pm.

Meeting with key stakeholders

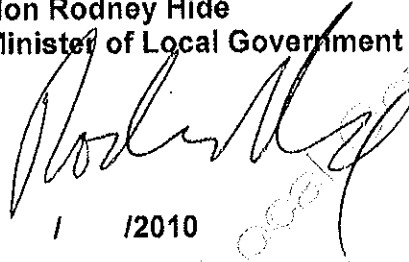
- On 24 February, you and the Minister for the Environment will hold an open forum discussion with stakeholders in Christchurch. This meeting will provide stakeholders (including ECan councillors, Ngai Tahu, and mayors and CEOs of the territorial authorities) with the opportunity to inform Ministers of their views. MfE will be providing a run sheet for meeting.

Points to raise

- The Government's response needs to be very clearly aligned with the problem definition. There are significant risks involved in removing the democratic rights of communities to be represented by elected members, therefore:
 - Does the Government accept the review team's finding that ECan has failed to manage freshwater effectively?
 - If yes, does ECan's failure to effectively manage freshwater warrant the entire replacement of ECan by commissioners?
 - Could the Government, instead, appoint commissioners to fix the water management framework, and internal issues with ECan's planning and consenting function, while leaving the elected council in place to govern other functions.
- The Department of Internal Affairs cannot provide staff experienced in policy/legislation at present (due to the 3rd Auckland Bill). You may wish to suggest a cross-agency team co-locates together to progress this issue.

- There are resourcing implications for ongoing monitoring and support for commissioners, depending on the scale of the commissioner's powers and tasks. If the Department were to undertake any ongoing role, we would require additional resources.

Hon Rodney Hide
Minister of Local Government



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Proactively Released by the Minister of Local Government